

tion must be made between absolute impartiality and discriminatory acts by non-belligerents, the latter status being described as 'qualified', 'imperfect', or 'partial' neutrality. Thus under Article 48 states may be ordered to adopt only a 'qualified neutrality' and to apply economic sanctions. Further, regard must be had to the detailed working of the machinery of the collective security system by which determination of the aggressor is made. Thus the central organ may fail to make a determination under Article 39 or the determination may be in the context of a General Assembly recommendation which may be ignored. Again, in the absence of an authoritative decision by a competent organ, states may make their own determinations at their own risk. In any case neutrality may be necessary if both belligerents are unlawful. In sum, neutrality remains as a status in a considerable number of situations."

Brownlie, *International Law and the Use of Force by States* (1963) 402-404.

See also Wright, "The Outlawry of War and the Law of War", 47 Am. J. Int'l L. (1953) 365, 367; Wright, "The New Law of War and Neutrality", *Varia Juris Gentium* (Leyden, 1959) 412; McDougal and Feliciano, *Law and Minimum World Public Order, the Legal Regulation of International Coercion* (1961) 68-71.

Neutrality and the United Nations Charter

§ 2

Obligations
of members

Section 232 of the United States naval manual, *Law of Naval Warfare*, reads as follows:

"The Charter of the United Nations imposes upon the member States the obligations to settle their international disputes by peaceful means and to refrain from the threat or use of force in their international relations. The obligation to refrain from the threat or use of force is modified by the right of individual and collective self-defense to be exercised until the Security Council has taken the necessary measures to restore peace and by the obligation to carry out the decisions of the Security Council. In case of a threat to or breach of the peace, the Security Council is authorized to take enforcement action, involving or not involving the use of armed force, in order to maintain or restore peace. The member States are obligated to give the United Nations every assistance in any action it takes and to refrain from giving assistance to any state against which the United Nations is taking action. Consequently, the members of the United Nations may be obliged to give assistance with their armed forces to the United Nations in its enforcement actions, the fulfillment of which obligation is incompatible with the status of neutrality. On the other hand, member States may be obliged to give assistance to the United Na-

The
titled

h
g
fi
ca
m
to
ex

ne
St
di
th

of

tions in its enforcement actions only with measures not involving the use of armed force. In this case, they may be obliged to take a partisan, rather than an impartial, attitude toward the belligerents. These obligations of the member states, incompatible with the status of neutrality and with the principle of impartiality, under customary international law, come into existence only if the Security Council fulfills the functions delegated to it by the Charter. If the Security Council is unable to fulfill its assigned functions, the members may, in case of a war, remain neutral and observe an attitude of strict impartiality. [In the absence of a Security Council decision, States may discriminate, and even resort to war, against a State they deem guilty of an illegal armed attack. This follows from Article 51 of the Charter which stipulates the "right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations. . .". (It should also be noted that under the resolution "Uniting for Peace" the General Assembly of the United Nations may, in the event of a breach of the peace, make "appropriate recommendations to members for collective measures, including . . . the use of armed force when necessary. . .". However, at present these recommendations of the General Assembly do not constitute legal obligations for the member States.) In sum, then, although members may discriminate against an aggressor, even in the absence of any action on the part of the Security Council, they do not have the duty to do so. In these circumstances neutrality and complete impartiality both remain distinct possibilities.]"

U.S. Department of the Navy, Chief of Naval Operations, NWIP 10-2, *Law of Naval Warfare* (Sept. 1955, as amended July 1959), sec. 232; 1955 version printed in U.S. Naval War College, *International Law Studies*, 1955 (1957) 365-366 and 370, n. 19.

The United States Department of the Army Field Manual, entitled the Law of Land Warfare, states in section 513 that—

" . . . Although these provisions of the Charter [articles 39-42] have not made it impossible for a State to remain neutral, the obligations which the Charter imposes have to a certain extent qualified the rights of States in this respect. For example, if a State is called upon, under Articles 42 and 43 of the Charter, to take military action against an aggressor, that State loses its *right* to remain neutral but actually loses its neutrality only to the extent that it complies with the direction of the Security Council.

"A military commander in the field is obliged to respect the neutrality of third States which are not allied with the United States in the conduct of hostilities and are not violating their duty of neutrality toward this country, except to the extent that the State concerned has expressly qualified its neutrality."

U.S. Department of the Army Field Manual (FM 27-10) on the Law of Land Warfare (1956) 184.